

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	Docket No. TSCA-10-2021-0006
GREENBUILD DESIGN & CONSTRUCTION, LLC)	
)	MOTION TO COMPEL RESPONDENT TO ACCEPT SERVICE VIA EMAIL
Anchorage, Alaska)	
)	
Respondent.)	
_____)	

MOTION TO COMPEL RESPONDENT TO ACCEPT SERVICE VIA EMAIL

COMES NOW, the U.S. Environmental Protection Agency, Region 10 (“Complainant”), to respectfully request that this Tribunal compel GreenBuild Design & Construction (“Respondent”) to accept service of documents filed by Complainant via email.

40 C.F.R. § 22.16 allows parties to file motions provided that they are in writing, state the grounds therefor with particularity, set forth the relief sought, and be accompanied by any affidavit, other evidence or legal memorandum relied upon. This Tribunal should compel Respondent to accept service via email because it instructed the parties to consent to such service in its Prehearing Order, having to mail the Prehearing Exchange to Respondent during a pandemic would represent a hardship on Complainant, and the parties have been in fairly regular email communication, which indicates that the Respondent would not suffer a hardship by accepting service via email.

First, this Tribunal already instructed the parties to accept service via email. In its February 3, 2021 Prehearing Order, this Tribunal instructed the parties to file a preliminary statement that, among other things, “indicates the party’s consent to service of orders and decisions issued by this Tribunal, and to service of documents filed by other parties, *by email only* during this proceeding....” Feb. 3, 2021 Prehearing Order at 2. Respondent’s preliminary statement was due on March 26, 2021. *See* Mar. 2, 2021 Order on Complainant’s Motion for Extension of Time at 2. Respondent never served a

preliminary statement on Complainant, and the Office of Administrative Law Judge's electronic docket webpage does not have such a statement included in its list of filings for this case. As such, Complainant must assume that no such statement was ever filed.

Second, serving Respondent via the U.S. Mail would represent a hardship on the Government. Pursuant to this Tribunal's Mar. 2, 2021 Order, Complainant will be filing its Initial Prehearing Exchange on April 19, 2021. That filing will consist of at least 80 different exhibits, plus a Prehearing Exchange document. Mailing the documents to Respondent via U.S. Mail presents a hardship to Complainant, given the fact that most of Complainant's workforce continues to work remotely due to the ongoing COVID-19 pandemic and forcing someone to go into the office to accommodate this mailing could represent a risk to their life.

And finally, since Complainant and Respondent have been in fairly regular email communication since the pendency of this matter, accepting service via email is unlikely to present a hardship to Respondent. Complainant has requested consent to serve Respondent with these filings via email, at the email addresses that Respondent regularly uses to communicate with Complainant, but Respondent has failed to respond to this request.

Pursuant to this Tribunal's February 3, 2021 Prehearing Order, which provides that prior to filing a motion the moving party must contact all other parties to determine whether the other parties have any objection to the granting of the relief sought in the motion, Complainant again contacted Respondent on April 8, 2021 to request consent to serve it via email. Respondent has not responded to Complainant's attempt to discuss this matter with Respondent.

Respectfully submitted,

Andrew Futerman, EPA Region 10
Counsel for Complainant

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U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 155, M/S 11-C07
Seattle, Washington 98101
(206) 553-1037

In the Matter of *GreenBuild Design & Construction, LLC*, Respondent.
Docket No. TSCA-10-2021-0006

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Motion to Compel Service**, dated April 8, 2021 was served on the following parties in manner indicated below:

Original by OALJ E-Filing System to:
Mary Angeles, Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Ronald Reagan Building, Room M1200
1200 Pennsylvania Avenue, NW
Washington DC 20004

Copy by Regular and Electronic Mail to:
Mr. and Mrs. Rodrigo and Kari von Marees
GreenBuild Design & Construction, LLC
2232 Culver Place,
Anchorage, Alaska 99503
rad@greenbuild.us.com
kad@greenbuild.us.com
For Respondent

Dated: April 8, 2021
Seattle, Washington

Respectfully submitted,

(Signature and Date)
Andrew Futerman
Counsel for Complainant
EPA Region 10